

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO: 06-CA-11656-MEL

YVETTE DOWNEY, Individually
and as Mother and Next of Kin to
ASHLEY CELESTER, a Minor, and
ANTHONY DOWNEY,
Plaintiffs

v.

BOB'S DISCOUNT FURNITURE, INC.,
Defendant

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ANSWER OF THE DEFENDANT BOB'S DISCOUNT FURNITURE, INC.

The Defendant, Bob's Discount Furniture, Inc., answers the Plaintiff's Complaint as follows:

1. The Defendant deny having knowledge or information sufficient to form an opinion regarding the truth or falsity of the allegations contained in Paragraph No. 1 of Plaintiff's Complaint.
2. The Defendant deny having knowledge or information sufficient to form an opinion regarding the truth or falsity of the allegations contained in Paragraph No. 2 of Plaintiff's Complaint.
3. The Defendant deny having knowledge or information sufficient to form an opinion regarding the truth or falsity of the allegations contained in Paragraph No. 3 of Plaintiff's Complaint.
4. The Defendant admit the allegations of Paragraph No. 4 of Plaintiff's Complaint.
5. The Defendant deny the allegations of Paragraph No. 5 of Plaintiff's Complaint.
6. By reference it incorporates its responses to paragraphs 1-5 herein or its answer to paragraph 6 of Count 1.

7. The Defendant admit the allegations of Paragraph No. 7 of Count 1.
8. The Defendant admit the allegations of Paragraph No. 8 of Count 1.
9. The Defendant admit the allegations of Paragraph No. 9 of Count 1.
10. The Defendant deny the allegations of Paragraph No. 10 of Count 1.
11. The Defendant deny having knowledge or information sufficient to form an opinion regarding the truth or falsity of the allegations contained in Paragraph No. 11 of Count 1.
12. The Defendant deny having knowledge or information sufficient to form an opinion regarding the truth or falsity of the allegations contained in Paragraph No. 12 of Count 1.
13. The Defendant deny the allegations of Paragraph No. 13 of Count 1.
14. The Defendant deny the allegations of Paragraph No. 14 of Count 1.
15. The Defendant deny the allegations of Paragraph No. 15 of Count 1.
16. The Defendant deny the allegations of Paragraph No. 16 of Count 1.
17. The Defendant deny the allegations of Paragraph No. 17 of Count 1.
18. The Defendant deny the allegations of Paragraph No. 18 of Count 1.
19. The Defendant deny the allegations of Paragraph No. 19 of Count 1.
20. The Defendant deny the allegations of Paragraph No. 20 of Count 1.
21. The Defendant deny the allegations of Paragraph No. 21 of Count 1.
22. By reference it incorporates its responses to paragraphs 1-21 herein as its answer to paragraph 22 of Count 2.
23. The Defendant deny having knowledge or information sufficient to form an opinion regarding the truth or falsity of the allegations contained in Paragraph No. 23 of Count 2.

24. The Defendant deny having knowledge or information sufficient to form an opinion regarding the truth or falsity of the allegations contained in Paragraph No. 24 of Count 2.
25. The Defendant deny the allegations of Paragraph No. 25 of Count 2.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Defendant, Bob's Discount Furniture, Inc., moves this Honorable Court to dismiss this civil action pursuant to Fed. R. Civ. P. 12 (b) (6) inasmuch as plaintiff has failed to state a claim against the defendant upon which relief can properly be granted.

SECOND AFFIRMATIVE DEFENSE

The Defendant Bob's Discount Furniture, Inc. says if the Plaintiff YVETTE DOWNEY, Individually and as Mother and Next of Kin to ASHLEY CELESTER, a Minor, and ANTHONY DOWNEY was injured and sustained damages and is entitled to recover as alleged in the Plaintiff's Complaint it is due to the liability of a third party for whom the Defendant is not responsible wherefore, the Plaintiff cannot recover in the instant action.

THIRD AFFIRMATIVE DEFENSE

The Defendant Bob's Discount Furniture, Inc., says that the injuries and damages alleged were caused in whole or in part by the Plaintiff's own negligence which was greater than any negligence of the Defendant.

FOURTH AFFIRMATIVE DEFENSE

The Defendants states that there is no subject matter jurisdiction pursuant to Rule 12 (b) (1) of the Federal Rules of Civil Procedure.

JURY CLAIM

The Defendants claims a trial by jury as to all issues.

BOB'S DISCOUNT FURNITURE, INC.
By its attorney,

/S/

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DATED: October 16, 2006